87-1801

Supreme Court, U.S.
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Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

BYRON KEITH HOLLAND, PETITIONER

V.

THE DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO, AND THE DISTRICT ATTORNEY FOR THE EIGHTEENTH JUDICIAL DISTRICT, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether the Court of Appeals erred in holding that the amended Colorado statute of limitations, §16-5-401.1, C.R.S., does not violate the prohibition against ex post facto laws under Art. I, §9, Cl. 3, and Art. I, §10, Cl. 1, and the Fourteenth Amendment of the United States Constitution.

B. Whether the Court of Appeals erred in holding that the amended Colorado statute of limitations, §16-5-401.1, C.R.S., does not violate the due process clause of the Fourteenth Amendment of the United States Constitution.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Byron Keith Holland, the Petitioner herein, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled case (Court of Appeals Case No. 86-2778) on October 26, 1987.

OPINION BELOW

The opinion and judgment of the United States Court of Appeals for the Tenth Circuit is unreported and is printed in Appendix A hereto.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Tenth Circuit (Appendix A) was entered on October 26, 1987. A Petition for Rehearing was filed in the Court of Appeals by Byron Keith Holland on November 12, 1987 (Appendix B), and a Motion for Enlargement of Time to File Petition for Rehearing was filed in the Court of Appeals on November 13, 1987 (Appendix C). By Order dated November 24, 1987, the Court of Appeals granted Mr. Holland's Motion for Extension of Time to file his Petition for Rehearing, and by the same Order denied the Petition for Rehearing (Appendix D).

The jurisdiction of this Court is invoked under 28 U.S.C. §2241.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The prohibitions against ex post facto laws are found in Art. I, §9, Cl. 3 and Art. I, §10, Cl. 1 of the United States Constitution:

> No Bill of Attainder or ex post facto Law shall be passed, U.S. Const., Art. I, §9, Cl. 3.
>
> No State shall . . . pass any . . . ex post facto Law, U.S. Const., Art. I, §10, Cl. 1.

The Fourteenth Amendment of the United States Constitution, §1, provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of a loss.

The applicable Colorado statute of limitations involved in this action are

§16-5-401(6), C.R.S. (effective July 1, 1982, and §16-5-401.1, C.R.S. (effective July 1, 1985).

> The period of time during which a person may be prosecuted shall be extended for an additional seven years as to any offense charged under section 18-3-402 or 18-3-403, C.R.S., when the victim at the time of the commission of the act is a child under 15 years of age, . . . §16-5-401(6), C.R.S.
>
> Legislative Intent in Enacting Section 16-5-401(6) and (7). The intent of the general assembly in enacting section 16-5-401(6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsection committed on or after July 1, 1979. §16-5-401.1, C.R.S.

STATEMENT OF THE CASE

This is an action by Petitioner Byron Keith Holland to obtain a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241. Mr. Holland is currently "in custody" within the meaning of 28 U.S.C., §2241(c)(3), since he is under personal recognizance bond with the District Court of

Douglas County, Colorado in Criminal Action No. 84CR12. The criminal Complaint which ultimately resulted in Mr. Holland's Petition for Writ of Habeas Corpus was originally filed in the Douglas County District Court, State of Colorado, on February 27, 1984, charging Mr. Holland with four counts of Second Degree Sexual Assault (§18-3-403(1)(c)(e), C.R.S.) and four counts of Sexual Assault on a Child, (§18-3-405(1), C.R.S.). The felony complaint alleged that Counts 1, 4, 5 and 8 occurred on or between May 1, 1977 and May 31, 1977; Counts 2 and 6 occurred on or between June 1, 1980 and June 30, 1980; and Counts 3 and 7 occurred on or between August 1, 1980 and August 31, 1980.

A three-year statute of limitations, §16-5-401, C.R.S., was in effect at the time the offenses were allegedly committed. On July 1, 1982, the Colorado Legislature amended the statute of limitations to increase the

limitations period for the particular offenses alleged to ten years. §16-5-401(6), C.R.S.

Mr. Holland moved for dismissal of all charges in the District Court of Douglas County, based on the running of the original three year statute of limitations. The People conceded that Counts 1, 4, 5 and 8 could not be prosecuted because the three year period had already expired prior to the filing of the charges. However, the People maintained that the amended statute of limitations, §16-5-401(6), C.R.S., effective July 1, 1982, should apply retroactively to Mr. Holland, since the previous three year statue of limitations period had not expired at the time of amendment.

By Findings of Fact and Order dated March 30, 1984, the Honorable Judge Richard D. Turelli of the District Court of Douglas County granted Mr. Holland's Motion to Dismiss. Judge Turelli held on the basis of United States v. Richardson, 512 F.2d 105 (3d Cir. 1975), that

the Colorado Legislature did not express a manifest intent for the amended statute of limitations to apply retroactively to offenses not already time-barred at the time of amendment; therefore, Counts 2, 3, 6 and 7 against Mr. Holland were barred by the previous three year statute of limitations. On April 23, 1984, the People filed an appeal of Judge Turelli's Order of Dismissal in the Colorado Supreme Court (Case No. 84SA191).

By Opinion dated October 21, 1985, the Supreme Court of the State of Colorado reversed and remanded the case with directions, finding that the four counts based on offenses occurring between June 1 and August 31, 1980, were not time-barred in relation to Mr. Holland. The Court based its decision on an even more recent statutory amendment, §16-5-401.1, C.R.S., effective July 1, 1985. The Court held that this amendment supplied a specific and explicit indication of legislative intent that the ten

year statute of limitations in §16-5-401(6), C.R.S., applied to specified offenses committed on or after July 1, 1979. Due to the recency of the enactment of §16-5-401.1, C.R.S., the application of that statute to the issues on appeal was not briefed by either party in Case No. 84SA191. Mr. Holland's only opportunity to argue that §16-5-401.1, C.R.S. was in violation of the ex post facto clause was in his Petition for Rehearing, which was denied by the Colorado Supreme Court on November 18, 1985.

Mr. Holland filed his Petition for Writ of Habeas Corpus, which is the basis of this Petition for Writ of Certiorari, in the United States District Court for the District of Colorado on March 21, 1986. Pursuant to Rule 603 of the Local Rules of Practice of the District Court, Judge Zita L. Weinshienk assigned the case to Magistrate Donald E. Abram. On September 9, 1986, Magistrate Abram entered his recommendation that Mr. Holland's Habeas

Corpus Petition should be denied. Mr. Holland filed objections to the recommendation of the Magistrate on September 19, 1986, and the matter was then set for oral argument by Judge Weinshienk and heard on November 14, 1986. Oral argument on November 14, 1986 was primarily directed to arguing the applicable law, since the facts were not in dispute. On November 24, 1986, Judge Weinshienk issued her Order of Dismissal in this action, adopting and approving the recommendation of United States Magistrate Donald Abram, denying the Petition for Writ of Habeas Corpus (Appendix F), and dismissing the case with prejudice.

On December 5, 1986, Petitioner-Appellant Byron Keith Holland filed a Notice of Appeal in the United States District Court for the District of Colorado. Pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, a Certificate of Probable Cause was issued by Judge Weinshienk on December 11, 1986. After

briefing, oral argument was heard in the appellate action (Case No. 86-2778) by the United States Court of Appeals for the Tenth Circuit on July 17, 1987. On October 26, 1987, the Court of Appeals affirmed the decision of the District Court, and denied the Petition for Writ of Habeas Corpus. A copy of the opinion of the Court is attached hereto in Appendix A. A Petition for Rehearing was filed by Mr. Holland on November 12, 1987 and denied by the Court on November 24, 1987. (Appendices B and D) Mr. Holland then filed a Motion for Stay of Mandate Pending Application for Certiorari on November 13, 1987 (Appendix C). On December 9, 1987, the Court of Appeals granted a Stay of Mandate up to and including January 8, 1988, in order to allow the filing of this Petition for Writ of Certiorari. (Appendix E)

REASONS FOR GRANTING THE WRIT

The opinion of the United States Court of Appeals for the Tenth Circuit has decided an

important question of federal law which has not been, but should be, settled by this Court. Neither this Court nor any of the circuit courts have addressed the issue of whether an amended criminal statute of limitations, which purports to provide legislative intent for retroactive application of a previous extended statute of limitations, violates the ex post facto and due process clauses of the United States Constitution. The unanswered question is whether it is constitutionally permissible for curative legislation, enacted at a time after the original criminal statute of limitations has time-barred the filing of criminal charges, can provide retroactive intent and validate a criminal prosecution.

In Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960, 67 L. Ed.2d 17 (1981), this court held that two critical elements must be present for a criminal or penal law to be ex post facto:

> [I]t must be retrospective, that is, it must apply to events occurring before its enactment, and it must disadvantage the offender affected by it. [Citations omitted.] 450 U.S. at 29, 101 S. Ct. at 964.

A law need not impair a "vested right" to violate the ex post facto prohibition; the critial issue is not an individual's right to less punishment, but a lack of fair notice and governmental restraint when the legislature increases punishment beyond what was originally prescribed when the crime took place. Weaver v. Graham, supra, 450 U.S. at 29-30.

In situations involving criminal statutes of limitations, the overwhelming weight of authority is that an extended or increased statute of limitations which applies retroactively to offenses committed prior to its effective date violates the ex post facto clauses of the United States Constitution if it attempts to apply to those criminal offenses already time-barred by the previous statute of

limitations. United States v. Richardson, 512 F.2d 105 (3d Cir. 1975); United States v. Kurzenknaby, 136 F. Supp. 17 (D.C.N.J. 1955); United States v. Haug, 21 F.R.D. 22 (D. Ohio 1955); United States v. Ganaposki, 72 F. Supp. 982 (D.C. Pa. 1947); Falter v. United States, 23 F.2d 420 (2d Cir. 1928). However, even though on July 1, 1982, the effective date of Colorado's extended ten year statute of limitations (§16-5-401(6), C.R.S.), Mr. Holland's prosecution on four counts occurring between June 1 and August 31, 1980, was not time-barred, the Colorado Legislature did not attempt to apply the extended statute of limitations retroactively. There was nothing in the legislative history of §16-5-401(6), C.R.S., or the manifest language of the statute itself, to indicate that it would apply to offenses committed prior to its effective date. The trial court, the District Court of Douglas County, correctly dismissed the action against

Mr. Holland on this basis, and held under United States v. Richardson, 512 F.2d 105 (3d Cir. 1975), that a law is presumed to operate prospectively in the absence of a clear expression to the contrary, and that the Colorado Legislature did not manifest an intent for the extended statute of limitations to apply retroactively. Therefore, Mr. Holland's rights to a complete defense on the basis of the previous three year statute of limitations (§16-5-401, C.R.S.), which was in effect at the time the offenses were allegedly committed, absolutely vested on August 31, 1983.

The problem with §16-5-401.1, C.R.S., effective July 1, 1985, is that it is an attempt by the Colorado Legislature to do what it could have done, but did not do, in 1982. That section, which attempted to retroactively provide legislative intent for the July 1, 1982 extended statute of limitations, §16-5-401(6), C.R.S., provides as follows:

> The intent of the General Assembly in enacting §16-5-401(6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

Section 16-5-401.1, C.R.S., is a curative or amendatory statute, since it attempts to operate retroactively to past events to correct errors or omissions of the legislature. As a general rule, curative legislation is permissible and may be enacted to cure or validate errors in legislative proceedings and to clarify legislative intent, but such legislation may not violate constitutional protections. 16 Am.Jur.2d, Constitutional Law §678, p. 667; Sands, Sutherland Statutory Construction, §41.12, p. 291 (4th Ed. 1973). §16-5-401.1, C.R.S. falls squarely within the ex post facto requirements as stated in Weaver v. Graham, supra, and therefore violates the ex post facto prohibition of the United States Constitution. By its specific wording,

§16-5-401.1, C.R.S. is retrospective as it applies to offenses committed prior to its effective date. By increasing the statute of limitations for all specified offenses committed on or after July 1, 1979, the statute totally alters the legal consequences of acts completed up to six years prior to its effective date. In our factual situation, §16-5-401.1, C.R.S. directly disadvantages Mr. Holland, since it attempts to deprive him of a complete defense which goes to the substance of the charges.

In addition, due to the timing of the enactment of §16-5-401.1, C.R.S., Mr. Holland was not provided with fair notice of the increased statute of limitations. Nothing in the express language or legislative history of §16-5-401(6), C.R.S., indicated to Mr. Holland that the extended period of limitations would apply to offenses committed prior to its effective date of July 1, 1982. By July 1, 1985, three years later, the prosecution of Mr.

Holland for offenses committed in 1980 was forever time-barred by the initial three statute of limitations under §16-5-401(1)(a), C.R.S., and Mr. Holland was not given any notice of retroactive effect of the amendatory statute until after the previous time period had expired. The Colorado Legislature simply should not be allowed to accomplish in 1985 what it forgot to accomplish in 1982, since the effect on Mr. Holland is to deprive him of a vested defense without fair notice.

This Court has repeatedly held that criminal statutes of limitations provide the primary guarantee against bringing overly stale criminal charges, and such statutes are to be interpreted in favor of repose. United States v. Gouveia, 467 U.S. 180, 192 (1984); United States v. Lovasco, 431 U.S. 783, 789 (1977); United States v. Marion, 404 U.S. 307, 323 (1971); Toussie v. United States, 397 U.S. 112, 114-15 (1970).

Mr. Holland further asserts in this Petition that the 1985 Colorado extended statute of limitations has violated his due process rights under the Fourteenth Amendment of the United States Constitution. This issue has not been addressed by this Court or by any Court of Appeals in the context of a criminal statute of limitations, but the Forbes Pioneer Boat Line v. Board of Commissioners decision, 258 U.S. 338 (1922) upheld due process arguments in a civil context. In that decision, this court held that the Florida Legislature could not by legislative act retroactively validate tolls unlawfully collected from the Plaintiff Pioneer Boat Line for passage through the lock of a canal. The court held that the due process clause of the Fourteenth Amendment prohibited the state legislature from taking away from a private party a vested right to recover money by retroactive legislation. The court addressed this specific issue in the following manner:

> To say that the legislature simply was establishing the situation as both parties knew from the beginning it ought to be would be putting something of a gloss upon the facts. We must assume that the plaintiff went through the canal relying upon its legal rights and that it was not to be deprived of them because the legislature forgot. 258 U.S. at 340.

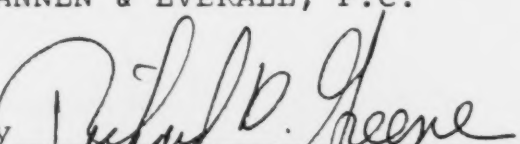
Mr. Holland finally asserts that this Court should consider the effect, not the form, of the amended statute of limitations, §16-5-401.1, C.R.S., in determining whether such a curative amendment violates constitutional provisions. Weaver v. Graham, supra, 450 U.S. at 31. In this regard, the language of Cummings v. Missouri, 4 Wall. 277 (1867), quoted by the court in Weaver v. Graham, applies with equal force to our present situation:

> The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secured against deprivation for past conduct by legislative enactment, under any form, however disguised. 451 U.S. at 31, Quoting Cummings v. Missouri, 4 Wall. 277, 325.

On this basis, Petitioner Holland respectfully requests that this Court decide this unsettled question of federal law in his favor, and grant this Petition for Writ of Certiorari.

Respectfully submitted this 5th day of January, 1988.

BANTA, HOYT, BANTA, GREENE
HANNEN & EVERALL, P.C.

By 

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PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BYRON KEITH HOLLAND,

Petitioner-Appellant,

vs. No. 86-2778

THE DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO, and THE DISTRICT ATTORNEY FOR THE EIGHTEENTH JUDICIAL DISTRICT,

Respondents-Appellees.

Appeal From the United States District Court
for the District of Colorado
(D.C. No. 86-Z-554)

Wade H. Gateley (Richard D. Greene with him on the briefs) of Banta, Hoyt, Banta, Greene, Hannen & Everall, P.C., Englewood, Colorado, for Petitioner-Appellant.

James C. Sell, Chief Deputy District Attorney (Robert R. Gallagher, Jr., District Attorney, with him on the brief), Eighteenth Judicial District, Littleton, Colorado, for Respondents-Appellees.

Before McKAY, SEYMOUR, and MOORE, Circuit Judges.

MOORE, Circuit Judge.

APPENDIX A

Byron Keith Holland appeals the denial of his petition for relief under 28 U.S.C. § 2241 claiming that an extended statute of limitations applied in the State of Colorado to his prosecution violates his constitutional rights under art. I, § 9, cl. 3, and art. I, § 10, cl. 1, and the Fourteenth Amendment of the United States Constitution. We disagree and affirm the denial of the petition for habeas corpus.

At issue in this case is whether an amended statute of limitations, which was later amended itself, was properly applied to bar the dismissal of petitioner's indictment. When the alleged offenses occurred, Colo. Rev. Stat. § 16-5-401(1)(a) (1973) provided a three-year limitation period from the commission of the offense to institute a prosecution for such

felonies.[1] On July 1, 1982, the Colorado General Assembly amended § 16-5-401 by the addition of subsections (6) and (7), the former of which is pertinent to this action. Subsection (6) extended the time period for filing charges under §§ 18-3-403 and 18-3-405 an additional seven years if at the time of the commission of the act, the victim is a child

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[1]Colo. Rev. Stat. § 16-5-401(1) (1963) stated:

> Except as otherwise provided by statute applicable to specific offenses or circumstances, no person shall be prosecuted, tried, or punished for any offense unless the indictment, information, complaint, or action for the same is found or instituted within the period of time after the commission of the offense as specified below:
>
> . . . .
>
> Other felonies: Three years

under fifteen years of age. Colo. Rev. Stat. § 16-5-401(6) (the 1982 amendment).[2]

On February 27, 1984, a complaint was filed in the Douglas County District Court, State of Colorado, charging petitioner with four counts of sexual assault in the second degree in violation of Colo. Rev. Stat. § 18-3-403(1)(e)[3]

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[2]Colo. Rev. Stat. § 16-5-401(6) states: "The period of time during which a person may be prosecuted shall be extended for an additional seven years as to any offense charged under section 18-3-402 Or 18-3-403 . . . ."

[3]Colo. Rev. Stat. § 18-3-403 (1)(e) states:

> Any actor who knowingly inflicts sexual penetration or sexual intrusion on a victim commits sexual assault in the second degree if:
>
> . . . .
>
> (e) at the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim . . . .

and four counts of sexual assault on a child in violation of Colo. Rev. Stat. § 18-3-405.[4] Four of the offenses charged were allegedly committed between May 1 and May 31, 1977. The remaining four counts were alleged to have occurred between June 1 and June 30, 1980, and August 1 and August 31, 1980. At the time of the commission of each of the alleged offenses, the three-year statute of limitations was in effect. For each of the eight counts, the alleged victim was a child under the age of fifteen.

Petitioner moved to dismiss all of the charges, contending the statute of limitations had run. At a hearing on the motion, the

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[4]Colo. Rev. Stat. §18-3-405 states: "Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim."

prosecutor for Douglas County (the State) confessed the motion as to the 1977 charges, conceding that the original three-year statute of limitations barred their prosecution. However, the State contended that prosecution of the 1980 offenses was not barred because the 1982 amendment extended the time within which to file charges. Petitioner maintained that the amended statute of limitations applied only to offenses committed after its passage. Relying on United States v. Richardson, 512 F.2d 105 (3d Cir. 1975), the state court held that the 1982 amendment did not apply retroactively to the alleged offenses in the absence of clear legislative intent in the history of the 1982 amendment or the statutory language to overcome the general rule that a statute is presumed to operate prospectively.

The State appealed the decision to the Colorado Supreme Court. While the appeal was

pending, the General Assembly amended § 16-5-401, adding § 16-5-401.1., effective July 1, 1985, 1985 Colo. Sess. Laws 615, 616 (the 1985 amendment). This section states:

> The intent of the general assembly in enacting section 16-5-401 (6) and (7) in 1982 was to create a ten-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

In its review of the Douglas County District Court's order, the Colorado Supreme Court premised its decision on petitioner's concession that the legislature may extend the statute of limitations for prosecutions not already time-barred as of the effective date of the extension without violating the constitutional prohibition against ex post facto laws, provided legislative intent to do so is present. The court, however, focused its discussion on the effect of the 1985 amendment rather than the 1982 amendment. Applying the proposition that subsequent legislative

declarations of intent of an earlier statute are entitled to great weight, NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974), the Colorado Supreme Court held that § 16-5-401.1 provided the "specific and explicit indication of legislative intent . . . sufficient to overcome the general presumptions relied on by the trial court. . . ." People v. Holland, 708 P.2d 119, 121 (Colo. 1985) (en banc). The court concluded that the 1982 amendment "applies to the prosecution of offenses not already time-barred as of July 1, 1982," id., and reversed and remanded the case to reinstatement of the 1980 charges.

Subsequently, the petitioner sought a writ of habeas corpus under 28 U.S.C. § 2241 raising ex post facto and due process issues. The matter was referred to a United States Magistrate pursuant to Rule 605 of the Local Rules of Practice of the United States District Court for the District of Colorado. The

magistrate recommended denial of the petition on the grounds that "the extension of an unexpired statute of limitations does not make criminal what was previously acceptable . . . increase the punishment or deprive an accused of defenses which existed at the time the act was committed." Since petitioner had failed to demonstrate an ex post facto violation, the magistrate concluded the due process challenge could not survive.

After oral argument on review of the magistrate's recommendation,[5] the district court affirmed. Although the court was concerned with the fairness of "taking a piece of '85

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[5]At the time of the hearing on the petition for habeas corpus, petitioner remained under bond, and a trial date had not been set.

legislation and applying it back to '82 to interpret intent,"[6] the court did not believe that the circumstances of this case "amounts to a constitutional challenge of ex post facto." The court found that petitioner's reliance on a prospective application of the 1982 amendment was not the type of reliance that triggers ex post facto concerns. The district court concluded that petitioner's constitutional rights are not violated by inserting the 1985 expression of legislative intent into the 1982 amendment to establish its intended retroactive operation.

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[6] In response to the court's question during the hearing, the petitioner stated that the parties did not brief the issue of the impact of § 16-5-401.1 on the amendment since its enactment followed their submission of briefs. Although petitioner sought rehearing before the Colorado Supreme Court on this basis, the motion was denied.

Petitioner now reurges that the 1985 amendment as applied to his prosecution violates the ex post facto clause of the Constitution. Petitioner distinguishes that although his prosecution was not barred on July 1, 1982, the effective date of the extended ten-year statute of limitations, the 1982 amendment was not specifically retroactive in its application; thus, the legislature cannot do in 1985 what it failed to do in 1982. "By increasing the statute of limitations for all specified offenses committed on or after July 1, 1979, the statute totally alters the legal consequences of acts completed up to six years prior to its effective date," petitioner argues. Thus, according to petitioner, the 1985 amendment operates to deprive him of a complete defense that was absolutely vested on August 31, 1983. Petitioner principally relies on United States v. Richardson, 512 F.2d at 105, to support the

proposition that the legislature must clearly express its intention to make a statute of limitations retroactive and Forbes Pioneer Boat Line v. Bd. of Comm'rs, 258 U.S. 338 (1922), which prohibited the curative legislation at issue from affecting constitutional rights.

Petitioner's challenge is met and foreclosed by looking to principles of statutory construction. Upon our review of these rules, we have concluded we need not proceed to decide whether the 1982 amendment as written is a violation of the ex post facto clause when applied to Mr. Holland.

We begin with the statutory language itself. "What a legislature says in the text of a statute is considered the best evidence of legislative intent or will." 2A C. Sands, Southerland on Statutory Construction § 46.03, at 82 (4th ed. 1973) [hereinafter Southerland]. Section 16-5-401(6) states: "The period of time

during which a person may be prosecuted shall be extended for an additional seven years as to any offense charged under section 18-3-402 or 18-3-403 . . . ." (Emphasis added.) Subsection (6) is an amendment by addition to § 16-5-401 (1973) which was reenacted by the legislature in 1982. The language of the original act which subsection (6) amends is unchanged. As a general rule, "[p]rovisions of the original act which are reenacted in the amendatory act, either in the same or equivalent words, are considered a continuation of the original law." Southerland § 22.36, at 300. Thus, if we look to the original statute of limitations of three years, the plain language of amended subsection (6) evinces the legislative intent to extend the three-year statute of limitations already in effect an additional seven years provided the victim of the alleged offense is under the age of fifteen at the time of the crime. The

language of the 1982 amendment by addition conveys the intention to make this section applicable to those crimes already covered by the reenacted amendment.

Petitioner Holland concedes that at the time of the enactment of the 1982 amendment, his prosecution was not time-barred. However, on appeal, he argues that the 1982 amendment lacks a clear expression of legislative intent to be applied prospectively, and, thus, the later 1985 amendment violates the ex post facto clause as applied to his prosecution by creating the earlier unexpressed intent in an impermissible manner.[7]

We disagree. Given those principles of statutory construction already discussed, we are satisfied the General Assembly intended the 1982

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[7]It is only in this latter sense that United States v. Richardson, 512 F.2d at 105, would apply.

amendment apply to prosecutions not already time-barred and extend that bar an additional seven years. The provisions of the 1982 amendment are intelligible and complete on the subject considered. Southerland, § 22.04, at 178. Thus, it is unnecessary for us to look to the 1985 enactment to establish the import of the 1982 amendment recognizing, as we do, that "[c]constitutional limitations may be complied with, but not avoided by amendment." Id.

Because the 1982 amendment is clear on its face, we cannot substitute our presumptions of intent or second-guess the General Assembly. "The states may erect reasonable procedural requirements for triggering the right to an adjudication in the form of statutes of limitation without the federal court interjecting its presumptions to construe them." Logan v. Zimmerman, 455 U.S. 422, 437 (1982). We must presume that the legislature sought to

extend the statute of limitations for those prosecutions not already barred. In our judgment, the 1985 amendment was unnecessary to clarify the prior intent.

AFFIRMED.

Received November 12, 1987
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BYRON KEITH HOLLAND,	)	
Petitioner-Appellant,	)	
vs.	)	No. 86-2778
THE DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO, and THE DISTRICT ATTORNEY FOR THE EIGHTEENTH JUDICIAL DISTRICT,	)	
Respondents-Appellees.	)	

PETITION FOR REHEARING

COMES NOW Petitioner-Appellant Byron Keith Holland, by and through his undersigned attorneys, Banta, Hoyt, Banta, Greene, Hannen & Everall, P.C., and respectfully submits the following Petition for Rehearing based on this Court's opinion issued October 26, 1987, affirming the judgment of the United States District Court for the District of Colorado.

APPENDIX B

LEGAL ARGUMENT

This Court has declined to address the issue of whether §16-5-401.1, C.R.S., the curative legislation of the Colorado General Assembly effective July 1, 1985, is a violation of the ex post facto and due process clauses of the United States Constitution as applied to Mr. Holland, and has decided Mr. Holland's appeal based on principles of statutory construction. The Court has held in its opinion that it is unnecessary to look to the 1985 curative amendment to establish the legislative intent of the 1982 extended statute of limitations (§16-5-401(6), C.R.S.), since the statutory language of the 1982 amendment is "intelligible and complete on the subject considered" and "clear on its face," and supplies the necessary intent for the 1982 amendment to apply to prosecutions not already time barred. (Opinion, pp. 8-9).

Petitioner Byron Keith Holland respectfully submits that the above-described rationale fails to take into account the principle that a statute is presumed to operate prospectively only in the absence of a clear expression to the contrary. The applicable principles are stated in United States v. Richardson, 512 F.2d 105, 106 (3rd Cir. 1975):

> The question is one of ascertaining congressional intent. Congress, of course, has the power to extend the period of limitations without running afoul of the ex post facto clause, provided the period has not already run. Falter v. United States, 23 F.2d 420, 425-26 (2d Cir. 1928). Criminal statutes of limitations, however, are to be interpreted in favor of repose. Toussie v. United States, 397 U.S. at 115, 90 S. Ct. 858. Moreover, a law is presumed to operate prospectively in the absence of a clear expression to the contrary. Hassett v. Welch, 303 U.S. 303, 314, 58 S. Ct. 559, 82 L. Ed. 858 (1938). Therefore, we must decline to hold that Congress in fact has exercised its power to extend the limitations period in the instant case, unless we discern a clear intention on the part of Congress that §462(d) should apply to offenses committed before September 28, 1971.

Colorado statutes are presumed to be prospective in their operation. §2-4-202, C.R.S. All statutes must be apply prospectively only, unless a contrary legislative intent is clearly manifest. McCartney v. West Adams County Fire Protection District, 574 P.2d 516 (Colo. App. 1978); Allchurch v. Project Unicorn, Ltd., 33 Colo. App. 173, 516 P.2d 441 (1973). In addition, the instant action involves a criminal statute of limitations, and such statutes are to be liberally construed in favor of repose for the accused, since protection under a criminal statute of limitations is a substantive right affecting jurisdiction of the Court. 21 Am. Jur.2d, Criminal Law, §155, 154; Bustamente v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958); People v. Steinberg, 672 P.2d 543 (Colo. App. 1983); Toussie v. United States, 397 U.S. 112, 90 S. Ct. 858, 25 L. Ed.2d 156 (1970); Waters v. United States, 328 F.2d 739, 742 (10th Cir. 1964).

Even though the Colorado General Assembly phrased the 1982 Amendment, §16-5-401(6), C.R.S., as an extension of the period of limitations "for an additional seven years", the statutory language did not state whether the extension applied to offenses committed before the July 1, 1982 effective date of the amendment. This intent for retrospective operation of the amended statute cannot be implied or inferred; it must be expressly stated in the manifest language of the statute itself. The issue is not whether the language of the original statute (§16-5-401, C.R.S.) remained unchanged, and subsection (6) was added to extend the statute of limitations from three years to a ten year period, but whether the extended time period applied to offenses committed prior to the July 1, 1982 effective date of the amendment. The Colorado General Assembly provided nothing in the language of the amendment itself which expressly stated such an

intent; this is the reason that the Colorado General Assembly felt it necessary to clarify the issue of retroactive application in the July 1, 1985 amendment (§16-5-401.1, C.R.S.). On this basis, the necessary express legislative intent is lacking, and the issue of the ex post facto violation of the 1985 amendment of the statute of limitations must be considered.

On the basis of the foregoing, Petitioner-Appellant Byron Keith Holland respectfully requests that this Court allow rehearing of the issues raised on appeal, examine the merits of the Petitioner's ex post facto and due process arguments against the 1985 amendment, and grant Mr. Holland's Petition for Writ of Habeas Corpus.

Respectfully submitted this 12th day of November, 1987.

BANTA, HOYT, BANTA, GREENE
HANNEN & EVERALL, P.C.

By s/Wade H. Gateley
Richard D. Greene, #1145
Wade H. Gateley, #12284
Attorneys for Petitioner-
Appellant Byron Keith Holland
6300 South Syracuse Way, #555
Englewood, Colorado 80111
Telephone: 220-8000

CERTIFICATE OF MAILING

I hereby certify that on the 12th day o November, 1987, I mailed a true copy of the foregoing PETITION FOR REHEARING by placing th same in the United States mail, postage prepaid addressed to:

Mr. Paul A. King
Deputy District Attorney
405 South Wilcox Street
Castle Rock, CO 80104

Robert R. Gallagher, Jr., D.A.
James C. Sell, Chief Deputy D.A.
7325 South Potomac Street
Englewood, CO 80112

s/ Kathy Cousineau

Received November 13, 1987

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Case No. 86-2778

BYRON KEITH HOLLAND,

Petitioner-Appellant,

vs.

THE DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO, and THE DISTRICT ATTORNEY FOR THE EIGHTEENTH JUDICIAL DISTRICT,

Respondents-Appellees.

MOTION FOR ENLARGEMENT OF TIME TO FILE PETITION FOR REHEARING AND FOR STAY OF MANDATE

COMES NOW Petitioner-Appellant Byron Keith Holland, by and through his undersigned attorneys, Banta, Hoyt, Banta, Greene, Hannen & Everall, P.C., and respectfully requests that the Court enlarge the time for the filing of a Petition for Rehearing in the above-captioned action pursuant to Rules 26(b) and 40(a) of the

Federal Rules of Appellate Procedure, and stay the issuance of a mandate of this Court pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. As grounds therefor, Petitioner-Appellant states and alleges as follows:

1. The opinion of this Court affirming the decision of the United States District Court for the District of Colorado in this action was filed on October 26, 1987, and judgment in accordance with the opinion was entered on that date.

2. A copy of the opinion of the Court in this action, with an attached cover letter from the Clerk of the Court, was mailed to counsel for Plaintiff-Appellant Byron Holland on October 26, 1987, and received by counsel on October 27, 1987.

3. Rule 40(a) of the Federal Rules of Appellate Procedure provides that the petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened

or enlarged by order or by local rule. The fourteen day deadline from entry of judgment in this action was November 9, 1987.

4. Counsel for Petitioner-Appellant Byron Keith Holland was under the impression that an additional three days for the filing of the Petition for Rehearing would be allowed pursuant to Rule 26(c), since a copy of the Court's opinion and a notice of the entry of judgment was sent by mail to counsel. Due to this false impression, and due to the press of other business, counsel for Petitioner-Appellant did not file his Petition for Rehearing until Thursday, November 12, 1987.

5. The intervening day, Wednesday, November 11, 1987, was a legal holiday.

6. The enlargement of time for the filing of a Petition for Rehearing would not prejudice any party in this action.

7. Based on good cause shown, Petitioner-Appellant Byron Keith Holland moves the Court

for an Order enlarging the time to file his Petition for Rehearing pursuant to Rules 26(b) and 40(a) of the Federal Rules of Appellate Procedure, and consider his Petition on its merits.

8. In addition, Petitioner-Appellant Byron Keith Holland requests that this Court stay the mandate of the court until disposition of his Petition for Rehearing, pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. In the alternative, if the Court decides not to enlarge the time for filing a Petition for Rehearing and consider the Petition, Mr. Holland requests a stay of the mandate pending application to the Supreme Court for a writ of certiorari, pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure.

Respectfully submitted this 13th day of November, 1987.

BANTA, HOYT, BANTA, GREENE
HANNEN & EVERALL, P.C.

By s/Wade H. Gateley
Richard D. Greene, #1145
Wade H. Gateley, #12284
Attorneys for Petitioner-Appellant
Byron Keith Holland
6300 South Syracuse Way, #555
Englewood, Colorado 80111
Telephone: 220-8000

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of November, 1987, I mailed a true copy of the foregoing MOTION FOR ENLARGEMENT OF TIME TO FILE PETITION FOR REHEARING AND FOR STAY OF MANDATE by placing the same in the United States mail, postage prepaid, addressed to:

Mr. Paul A. King
Deputy District Attorney
405 South Wilcox Street
Castle Rock, CO 80104

Robert R. Gallagher, Jr., D.A.
James C. Sell, Chief Deputy D.A.
7325 South Potomac Street
Englewood, CO 80112

s/Kathy Cousineau

NOVEMBER TERM - November 24, 1987

Before Honorable Monroe G. McKay, Honorable Stephanie K. Seymour and Honorable John P. Moore, Circuit Judges.

BYRON KEITH HOLLAND,	)	
	)	
Petitioner-Appellant,	)	
	)	
vs.	)	No. 86-2778
	)	
THE DISTRICT COURT,	)	
COUNTY OF DOUGLAS,	)	
STATE OF COLORADO, and	)	
THE DISTRICT ATTORNEY	)	
FOR THE EIGHTEENTH	)	
JUDICIAL DISTRICT,	)	
	)	
Respondents-Appellees.	)	

This matter comes on for consideration of appellant's motion for enlargement of time to file petition for rehearing and appellant's petition for rehearing.

It is ordered that appellant's motion for extension of time to file his petition for rehearing is granted. The petition for rehearing is ordered filed as of November 12, 1987.

APPENDIX D

It is further ordered that appellant's petition for rehearing is denied.

ROBERT L. HOECKER, Clerk

By s/Patrick Fisher
Patrick Fisher
Chief Deputy Clerk

APPENDIX D

NOVEMBER TERM - December 9, 1987

Before Honorable Monroe G. McKay, Honorable Stephanie K. Seymour and Honorable John P. Moore, Circuit Judges.

BYRON KEITH HOLLAND,	)	
	)	
Petitioner-Appellant,	)	
	)	
vs.	)	No. 86-2778
	)	
THE DISTRICT COURT,	)	
COUNTY OF DOUGLAS,	)	
STATE OF COLORADO, and	)	
THE DISTRICT ATTORNEY	)	
FOR THE EIGHTEENTH	)	
JUDICIAL DISTRICT,	)	
	)	
Respondents-Appellees.	)	

This matter comes on for consideration of appellant Brian Keith Holland's motion for stay of mandate pending application to the Supreme Court for certiorari.

Upon consideration whereof, it is ordered that the issuance of the mandate in the captioned appeal is stayed until January 8, 1988, and that if on or before that date there is filed with the Clerk of this court a notice

from the Clerk of the Supreme court that appellant has filed a timely petition for the writ in that court, the stay shall continue until final disposition in the Supreme Court.

ROBERT L. HOECKER, Clerk

APPENDIX E

Filed November 24, 1986
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 86-Z-554

BYRON KEITH HOLLAND,

Plaintiff,

vs.

THE DISTRICT COURT, COUNTY OF DOUGLAS, STATE OF COLORADO, and THE DISTRICT ATTORNEY FOR THE EIGHTEENTH JUDICIAL DISTRICT,

Defendants.

ORDER OF DISMISSAL

THIS MATTER was before the Court on November 14, 1986, for oral argument on Petition for Writ of Habeas Corpus. The Court heard the arguments and statements of counsel and made oral conclusions of law, which are incorporated herein by reference as if fully set forth. Accordingly, it is

ORDERED that the Court adopts and approves the Recommendation of United States Magistrate, dated September 10, 1986. It is

FURTHER ORDERED that the Petition for Writ of Habeas Corpus is denied. It is

FURTHER ORDERED the case is dismissed with prejudice, the parties to pay their own costs.

DATED at Denver, Colorado, this 24th day of November, 1986.

BY THE COURT:

s/ZITA L. WEINSHIENK
ZITA L. WEINSHIENK, Judge
United States District Court

Filed September 10, 1986
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 86-Z-554

BYRON KEITH HOLLAND,)
)
Petitioner,)
)
vs.)
)
THE DISTRICT COURT,)
COUNTY OF DOUGLAS,)
STATE OF COLORADO, and)
THE DISTRICT ATTORNEY)
FOR THE EIGHTEENTH)
JUDICIAL DISTRICT,)
)
Respondents.)

RECOMMENDATION OF UNITED STATES MAGISTRATE

Petitioner seeks habeas corpus relief in this Court pursuant to 28 U.S.C., §2241. Petitioner essentially claims that the amendment enlarging the statute of limitations has created an ex post facto law which violates his right to due process.

This case has been assigned to Magistrate Donald E. Abram pursuant to Rule 605 of the

Local Rules of Practice of the United States District Court for the State of Colorado. The Magistrate enters his recommendation after a review of the pleadings and briefs.

FACTS

On February 27, 1984, Petitioner Byron Keith Holland was charged with four counts of second/degree sexual assault and four counts of sexual assault on a child in violation of Colo. Rev. Stat. §§18-3-403(1)(e) and 18-3-405, respectively. Counts 1, 4, 5 and 8 were alleged in the complaint to have been committed between the dates of May 1 and May 31, 1977. The four remaining counts were based on offenses alleged to have occurred between June 1 and August 31, 1980.

A three year statute of limitations was in effect at the time the offenses were allegedly committed. Colo. Rev. Stat. §16-5-401(1)(a). On July 1, 1982, the Colorado legislature increased the statute of limitations to 10 years

for the particular offenses alleged. Colo. Rev. Stat. §16-5-401(6).

Petitioner moved for dismissal of all charges based on the running of the four year statute of limitations. The prosecution conceded that counts 1, 4, 5, and 8 could not be prosecuted because the 3 year period had already expired prior to the filing of those charges. As to the remaining counts, however, the prosecution maintained that the amended ten year statute of limitation applies.

STATE COURT PROCEEDINGS

The district court agreed with the prosecution's interpretation of law generally but dismissed the remaining counts on policy grounds. The court reasoned that, in the absence of contrary legislative intent, criminal statutes are presumed to apply prospectively from their effective date. Favoring a liberal construction in favor of the accused, the district court concluded that the amendment

extending the statute of limitations did not apply retroactively to causes of action which accrued before its effective date.

On appeal the Colorado Supreme Court reversed the district court's order. The court cited a statute that became effective subsequent to the district court's order which provides the requisite legislative intent surrounding the 1982 amendment. The statute provides:

> The intent of the general assembly in enacting section 16-5-401(6) and (7) in 1982 was to create a 10-year statute of limitations as to offenses specified in said subsections committed on or after July 1, 1979.

Colo. Rev. Stat. §16-5-401.1 (eff. July 1, 1985). "The Colorado Supreme Court determined that "subsequent legislative declarations concerning the intent of an earlier statute are not controlling, [but] are entitled to significant weight. NLRB v. Bell Aero Space Co., 416 U.S. 267, 275 (1974); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 380-81

(1969)." People v. Holland, No. 84SC191, slip op. at 4 (Colo.Sup.Ct. October 21, 1985). The court concluded that the clear indication of legislative intent found in section 16-5-401.1 overcame the presumption of prospectiveness relied upon by the district court. Id.

OPINION

Both the United States and Colorado Constitutions contain proscriptions against passage of ex-post facto laws. U.S. Const. Art. I, §§ 9, 10; Colo. Const. Art. II, § 11. The United States Supreme Court has had occasion to address the issue and has defined as ex post facto:

> [a]ny statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed.

Dobbert v. Florida, 432 U.S. 282, 292, 97 S. Ct. 2290, 2298 (1977); quoting Beazell v. Ohio, 269

U.S. 167, 169-70, 46 S. Ct. 68, 70 (1925). It is clear that extension of an unexpired statute of limitations does not make criminal what was previously acceptable. Nor does it increase the punishment or deprive an accused of defenses which existed at the time the act was committed.

In Falter v. United States, 23 F.2d 420 (1928), the Second Circuit addressed this same question. Judge Learned Hand summarized the issue by stating:

> Certainly it is one thing to revive a prosecution already dead, and another to give it a longer lease of life...For the state to assure a man that he has become safe from its pursuit, and therefore to withdraw its assurances, seems to most of us unfair and dishonest. But, while the chase is on, it does not shock us to have it extended beyond the time first set.

23 F.2d at 425-26. The logic espoused in Falter has been repeated by numerous courts in various jurisdictions. See, e.g., United States v. Kurzenknabe, 136 F.Supp. 17 (D.C.N.J. 1955); United States v. Ganaposki, 72 F.Supp. 982 (M.D.PA. 1947); See also United States v.

Richardson, 512 F.2d 105 (3rd Cir. 1975) (favoring prospective application of an extended statute of limitations in the absence of clear legislative intent to the contrary).

Petitioner's major argument is focused on the "legislative intent" statute which became effective July 1, 1985. Colo. Rev. Stat. §16-5-401.1. Petitioner has attacked the statute by stating that:

> By increasing the statute of limitations for all specified offenses on or after July 1, 1979, the statute totally alters the legal consequences of acts completed up to six years prior to its effective date. In addition, [Petitioner] is disadvantaged by the statutory amendment, since [the statute], if upheld, would deprive him of a complete defense which goes to the substance of the charges. Finally, the method in timing of the inactment of [the statute] did not provide [petitioner] with fair notice of the increased statute of limitations.

Petitioner's brief at 6. The first of the above-quoted arguments is problematic at best. The statute neither made criminal what was previously acceptable or increased the

punishment for the offenses charged. What was criminal prior to the statute remains criminal since its passage. What was non-criminal prior to the statute remains non-criminal. The argument is not well taken.

The second argument advanced by the petitioner addresses the deprivation of a defense issue. In ex post facto law analysis, alteration of defenses is relative only if the defenses existed at the time the alleged offense was consumated. Beazell v. Ohio, 269 U.S. 167, 169-70, 46 S. Ct. 68, 70 (1925). By its very nature a statute of limitations does not provide a defense which exists contemporaneously with a criminal act. The petitioner's "vested defense" arguments must therefore fail.

The final argument revolves around the "notice value" of criminal statutes. Petitioner appears to argue that criminal offenders would be less likely to commit crimes if they were aware that the period for potential prosecution

could be extended after the crime has been committed. The Magistrate is of the opinion that the deterent value of criminal statutes is substantially derived from the severity of the punishment, not the time during which punishment can be commenced. See Generally LaFave & Scott, Criminal Law, § 5 (1982). Alteration of the punishment of a crime is the key notice deficiency shared by ex post facto laws. "Critical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consumated." Weaver v. Graham, 450 U.S. 24, 30, 101 S. Ct. 960, 965 (1981). Under the present facts there was no ex post facto punishment alteration.

Petitioner has further argued that the legislative intent statute violates his due process rights. In order to raise a due process

challenge, Petitioner must first show a protectable liberty or property interest. Board of Regents v. Roth, 408 U.S. 564, 569, 92 S. Ct. 2701, 2705 (1972). The due process challenge is therefore derivitive of the ex post facto challenge. Because petitioner has not demonstrated a vested right or entitlement to a certain statute of limitations. The due process challenge must also fail.[1] The charges which did infringe a vested liberty interest have already been dismissed. Petitioner's rights have therefore been fully protected.

For the reasons herein stated, it is the report and recommendation of the Magistrate that petitioner's habeas corpus petition should be denied.

FURTHER, IT IS ORDERED that under Rule 605 of the Local Rules of practice of the United States District Court for the District of Colorado, the parties shall have ten (10) days after the service hereof to serve and file any

written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The failure to file written objections to the proposed findings and recommendations within ten (10) days after being served a copy may bar the aggrieved party from appealing the recommendations of the Magistrate that are accepted or adopted by the District Court Judge. Thomas v. Arn, 106 S. Ct. 466 (1986); Niehaus v. Kansas Bar Association, 793 F.2d 1159, 1164 (10th Cir. 1986).

Dated at Denver, Colorado September 9th, 1986.

BY THE COURT:

s/D. E. Abram
D.E. Abram
United States Magistrate

[1] In his brief petitioner also stated that "[the statute], is a curative or amendatory statute, since it attempts to operate retroactively to past events to correct errors or omissions of the legislature. As a general rule, curative legislation is permissible and may be enacted to cure or validate errors in legislative proceedings and to clarify legislative intent, but such legislation may not violate constitutional protections." Petitioner's Brief at 4 (citations omitted). The simple answer to petitioner's argument is that he has not shown a protectible constitutional right to a certain statutory period of limitations.